

COMMUNICABLE DISEASES PUBLIC HEALTH AUTHORITIES AND INFORMATION SHARING

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Common Legal Questions from Local Health Departments

The following are responses to common legal questions raised by local health departments. (LHDs).

1. What Authority do LHDs have to prevent, investigate, and control communicable diseases (CD)?

With regard to CDs, DCH and LHDs both have the following responsibilities:

- Endeavor to prevent and control disease, prolong life, and promote public health through organized programs. MCL 333.2221(1); 333.2433(1).
- Make investigations and inquiries as to:
 - The causes of disease and especially of epidemics;
 - The causes of morbidity and mortality;
 - The cause, prevention, and control of environmental health hazards, nuisances, and sources of illness. MCL 333.2221(2)(d); 333.2433(2)(c).
- Administrative Rules § 325.171 *et seq.* outline the control of disease specifically.

To carry out their respective responsibilities, both DCH and the LHDs have the following powers:

- Inspect, investigate, or authorize an inspection or investigation to be made of any matter, thing, premises, place, person, record, vehicle, incident, or event. MCL 333.2241(1); 333.2446.
 - If access refused, apply for an inspection or investigative warrant to carry out its inspection or investigation. MCL 333.2241(2) – 333.2247; 333.2446.
- Upon a determination of imminent danger to the health or lives of individuals within the State's / or LHD's jurisdiction, issue an order requiring immediate action to avoid, correct, or remove the imminent danger. MCL 333.2251; 333.2451. (As an example of such an order, included in this packet is DCH Director Olszewski's order directing Northwest Airlines to provide its list of passengers who were on a flight with an individual who was infectious with measles.)
 - If subject of order does not comply, petition circuit court for order requiring compliance.
- Issue an emergency order to control an epidemic if necessary to protect public health. MCL 333.2253; 333.2453.

a. What types of specific information are LHDs authorized to obtain/receive?

(i.e. Information pertaining to the particular communicable disease vs. underlying health conditions (which may contribute to the CD)).

Essentially, the LHD is authorized to receive “medical and epidemiologic information” (R 325.174), which is defined in the rule (R 325.171(i)), as well as specific identifier information as required (R 325.173(13), (16)).

R 325.174 Investigation of diseases, infections, epidemics, and situations with potential for causing diseases.

(1) The local health department that has jurisdiction where an individual who has a reported condition resides or where an illness or infection is being or may be spread shall initiate an investigation as necessary.

(2) An investigator who presents official identification of the local health department or the department shall promptly be provided with medical and epidemiologic information pertaining to any of the following:

- (a) Individuals who have designated conditions or other conditions of public health significance.
- (b) Individuals, whether ill or well, who are part of a group in which an unusual occurrence, outbreak, or epidemic has occurred.
- (c) Individuals who are not known to have a designated condition but whose medical or epidemiological information is needed for investigation into the cause of the occurrence of the condition.
- (d) Individuals who were potentially exposed to a designated condition.
- (e) Individuals who have a declared critical health problem pursuant to the provisions of Act No. 312 of the Public Acts of 1978, being § 325.71 *et seq.* of the Michigan Compiled Laws.

R 325.171 Definitions.

...

(i) "Medical and epidemiological information" means any of the following:

- (i) Medical histories.
- (ii) Results of examinations.
- (iii) Findings on laboratory tests.
- (iv) Diagnoses.
- (v) Treatments employed.
- (vi) Outcomes.
- (vii) The description and source of suspected causative agents.
- (viii) Any other information that is pertinent to an investigation which is requested by the local health department or the department in the course of that investigation.

In addition, R 325.173 goes on to outline requirements of a required report:

...
(13) Except...[AIDS/HIV, TB, VD, Chickenpox, and viral influenza]..., a required report by a physician shall contain all of the following information:

- (a) The patient's full name.
- (b) The patient's residential address, including street, city, village or township, county, and zip code.
- (c) The patient's telephone number.
- (d) The patient's date of birth, age, sex, race, and ethnic origin.
- (e) The name of the disease, infection, or condition reported.
- (f) The estimated date of the onset of the disease, infection, or condition, where applicable.
- (g) The identity of the reporting person.
- (h) Pertinent laboratory results.
- (i) Any other information deemed by the physician to be related to the health of the public.

...
(16) A required report by a clinical laboratory shall contain all of the following information:

- (a) The patient's full name.
- (b) The patient's residential address, including street, city, village or township, county, and zip code.
- (c) The patient's telephone number.
- (d) The patient's date of birth or age.
- (e) The patient's sex.
- (f) The specific laboratory test, date performed, and the results.
- (g) The name and address of the reporting clinical laboratory.
- (h) The name, address, and telephone number of the ordering person.

(17) To the extent that the information is readily available, a report of an unusual occurrence, outbreak, or epidemic of a disease, infection, or other condition shall include all of the following information:

- (a) The nature of the confirmed or suspected disease, infection, or condition.
- (b) The approximate number of cases.
- (c) The approximate illness onset dates.
- (d) The location of the outbreak.

b. Can a LHD obtain information on a suspected CD vs. confirmed CD vs. a group of non-ill persons that may contribute information to the epidemiological investigation/be considered a group of interest to the epidemiological investigation?

See R 325.174 as quoted above – allows for the collection of medical or epidemiological information on “individuals, whether ill or well” (2)(b) and even “individuals who are not known to have a designated condition but whose medical or epidemiological information is needed for investigation into the cause...” (2)(c).

2. How and when should undiagnosed CDs (not lab confirmed) be reported?
“When” to report is outlined below in the more specific questions, while the “how” to report is the same as any other confirmed report.

a. If a suspected case of a specific reportable condition is not diagnosed then is the case still reportable even if there is a lack of diagnosis?

Yes - it is required.

R 325.173 – Reporting and Surveillance Requirements

When a physician or clinical laboratory suspects the presence of a designated condition, but does not have sufficient information to confirm its presence, the physician or laboratory shall report the designated condition as suspect to the appropriate local health department. Upon confirmation of the designated condition, a physician or laboratory shall report the condition as confirmed to the appropriate local health department.

b. Should unusual clusters of illness be reported immediately even if there is no lab confirmation or additional samples are waiting for testing/diagnosis?

The administrative rules on this subject grant and expect discretion on behalf of doctors and laboratories. R 325.173(2) states that “[a] physician shall report the unusual occurrence of any disease, infection, or condition that threatens the health of the public, within 24 hours of diagnosis or discovery, to the appropriate local health department.” (Emphasis added) Also, a similar requirement rests on laboratories as well; R 325.173(5)(b) requires that labs shall report within 24 hours of discovery “[I]aboratory evidence of any other disease infection, or condition that is judged by the laboratory director to indicate that the health of the public is threatened.”

There is nothing in the rules that speaks directly to “clusters”, but it seems to fall beneath the “unusual occurrence” umbrella or that of a threat to the public health.

3. How should a LHD handle a facility/practitioner’s failure to report a CD?

a. What are the mechanisms/punishments that can be used to promote reporting and discipline those individuals who do not abide by the public health code?

- Under MCL § 333.2241 and § 333.2446, inspection or investigation is allowed to assure compliance with laws enforced by the department. This is completed by the issuance of a warrant under MCL § 333.2242. Warrant must be issued by a magistrate based on facts stated in affidavit of LHD. The warrant may be directed to law enforcement to assist LHD in the inspection or investigation.
- “...[A] person who violates a rule or order of the department is guilty of a misdemeanor...” (MCL § 333.2261)
- “The Department may promulgate rules to adopt a schedule of monetary penalties...for each violation or day that a violation continues, which may be

assessed for a specified violation of this code or a rule promulgated or an order issued under this code...” (MCL § 333.2262)

- “[A] local governing entity may adopt a schedule of monetary penalties...for each violation or day that the violation continues, which may be assessed for a specified violation of this code or a rule promulgated, regulation adopted, or order issued....” (MCL § 333.2461)

b. What can a LHD do if the above mechanisms do not remedy the situation?

- Appearance tickets may be issued by those persons designated representatives of the local health department (MCL § 333.2463)
- A LHD may issue a “citation” for violation of the Public Health Code, a regulation, or an order that the LHD has the authority and duty to enforce. If a schedule of monetary penalties has been adopted by the LHD, then a monetary penalty may be assessed. (MCL 333.2461).
- “[A] local health officer, without posting bond, may maintain injunctive action to restrain prevent, or correct a violation of a law, rule, or order which the officer has the duty to enforce, or to restrain, prevent, or correct an activity or condition which the officer believes adversely affects the public health. (MCL § 333.2465)
- Report violations of professional duty to state board with authority to supervise the practice and license of a professional (MCL § 333.16221(a))
- Report violations by a licensed health facility to licensing authorities (MCL § 333.20176).

4. What are the appropriate measures that can be used to restrict travel?

a. How does a LHD issue orders to individuals to restrict travel?

- Under MCL §§ 333.2251 and 333.2451, the director or a local health officer (within the area served by the local health department) may determine that an “imminent danger exists and shall inform individuals affected by the imminent danger.... [and] may specify action to be taken or prohibit the presence of individuals....”
- “Upon a determination by...a local health officer that an individual is a carrier and is a health threat to others, the department representative or local health officer shall issue a warning notice to the individual to cooperate with the...local health department....” (MCL § 333.5203(a))
- Under MCL § 333.5203(c), the notice shall include a statement that unless the notice is complied with the local health officer shall seek an order from the probate court involuntarily confining the person. (See MCL § 333.5205, outlining the procedure if the warning notice is not complied with.)
- “To protect the public health in an emergency, upon the filing of an affidavit by...a local health officer, the circuit court may order...the local health officer...to take an individual whom the court has reasonable cause to believe is a carrier and is a health threat to others into custody and transport the individual to an appropriate emergency care or treatment...and if determined necessary by the court, temporary detention....” (MCL § 333.5207)

b. Who should sign the issued orders? Who issues the orders?

- The Director (MCL § 333.2253) OR local health officer (MCL § 333.2453) has the authority to “prohibit the gathering of people for any purpose and may establish procedures to be followed during the epidemic....”
- As above under MCL § 333.5203(1) a department representative or local health officer must sign

c. Who has the authority to restrict movement?

In a general sense, only a court of competent jurisdiction may order involuntary detention.

See memorandum *Legal Authority of Michigan Department of Community Health to Respond to a SARS Outbreak* (which is included in this packet) for a detailed discussion of LHD’s power to detain, quarantine, and require treatment, or take other action to prevent or control the spread of a CD, and Infectious Disease Forms that are approved by the State Court Administrative Office for use in Michigan Courts.

5. What does a LHD need to do when it receives a request under the Freedom of Information Act (FOIA)?

a. How do you respond to a FOIA?

FOIA, MCL 15.231 *et seq.*, regulates and sets requirements for the disclosure of public records by all “public bodies” in the state. LHDs are public bodies (as is DCH). Thus, not more than 5 business days after receiving a written request, a LHD would need to respond by either (1) granting the request; (2) issuing a written notice to the requesting person denying the request; or (3) granting the request in part and issuing a written notice to the requesting person denying the request in part. A public body can notify the requester in writing and extend the time for responding to the request for an additional 10 days. (MCL 15.235). If a requester brings a court action to compel disclosure, and the public body is held to have violated FOIA, the public body could be ordered to pay the requester’s attorney fees and damages, and also a \$500 fine if the public body’s actions are determined to be arbitrary and capricious. (MCL 15.236).

b. What records should you supply for a FOIA? What if the FOIA asks for “everything”?

If the request describes a public record sufficiently to enable the public body to find the record (MCL 15.233(1)), provide everything that is not exempt, and charge the requester as allowed in statute. (MCL 15.234). A public body may (but is not required to) withhold from public disclosure certain categories of public records that are exempt from disclosure. If a public record contains exempt and nonexempt material, the public body is required to separate out the exempt and provide the nonexempt material.

FOIA lists 21 exempt categories. (MCL 15.243). One or more of the following exemptions may apply in whole or in part to information or records related to a communicable disease investigation:

- Specific personal information about an individual if the release would constitute a clearly unwarranted invasion of that individual's privacy. MCL 15.243(1)(a)
- Investigating records compiled for law enforcement purposes, but only to the extent that disclosure as a public record would do any of the following:
 - Interfere with law enforcement proceedings;
 - Deprive a person of the right to a fair trial or impartial administrative adjudication;
 - Constitute an unwarranted invasion of personal privacy;
 - Disclose the identity of a confidential source or, if the record is compiled by a criminal law enforcement agency in the course of a criminal investigation, disclose confidential information furnished by a confidential source;
 - Disclose law enforcement investigative techniques or procedures; or
 - Endanger the life or physical safety of law enforcement personnel. MCL 15.243(1)(b)
- Records specifically exempted from disclosure by another statute. MCL 15.243(1)(d)
- Information of records subject to the attorney-client privilege. MCL 15.243(1)(g)
- Information or records subject to the physician-patient privilege or other privilege recognized by statute or court rule. MCL 15.243(1)(h)
- Medical, counseling or psychological facts or evaluations which would reveal an individual's identity. MCL 15.243(1)(l)
- Communications and notes between and within public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final agency determination of policy or action. This exemption shall not apply unless the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in nondisclosure. MCL 15.243(1)(m)

The LHD should use all applicable exemptions to deny identifiable information about an individual test subject, absent the individual's authorization or consent.

c. What if the FOIA requests records that are subject to the federal privacy regulations under the Health Insurance Portability and Accountability Act (HIPAA)?

See discussion of HIPAA below.

d. Can a LHD request information from MDCH for a FOIA or does MDCH need to be FOIAed separately? Can a LHD county attorney call the MDCH or the MDCH attorney to coordinate FOIAs between agencies?

That is not necessary; simply deny the request or grant if able, and state that additional documents do not exist. The LHD has no additional duty to search out public documents outside of its realm of control. While any attorney, including LHD attorneys, are welcome to contact the Office of Legal Affairs within DCH at any time, it would not be necessary in this situation.

6. How does HIPAA apply to LHDs?

HIPAA applicability to LHD:

HIPAA applies only to “covered entities” and their business associates. Covered entities are:

- Health Plans (includes Blue Cross, commercial insurers, group health plans, HMOs, Medicaid, Medicare)
- Health care providers that engage in certain electronic transactions with regard to payment
- Health Care Clearinghouses (e.g. billing agencies)

Whether HIPAA applies to a LHD’s communicable disease program depends on the organization of the LHD and whether it has declared itself a “hybrid”, designating covered components and non-covered components. DCH is a hybrid. Its organizational chart, which is included in this packet, shows the components of DCH that are covered by HIPAA and non-covered components.

Regardless of HIPAA, LHDs must comply with state laws regarding confidentiality of information. State confidentiality law providing for the confidentiality of reports, records, and data pertaining to testing, care, treatment, reporting and research associated with communicable diseases and serious communicable diseases or infections (except for AIDS/HIV, which is governed by MCL 333.5131):

“Medical and epidemiological information which identifies an individual and which is gathered in connection with an investigation is confidential and is not open to public inspection without the individual's consent or the consent of the individual's guardian, unless public inspection is necessary to protect the public health as determined by a local health officer or the director [of DCH]”. Michigan Administrative Code, R 325.181; MCL 333.333.5111(2).

HIPAA applicability to requests for records under the Freedom of Information Act

The U.S. Department of Health and Human Services' Office for Civil Rights (which enforces HIPAA) just issued on August 24, 2004, FAQ 506 to provide guidance on the relationship of HIPAA to state public records laws.

Question

State public records laws, also known as open records or freedom of information laws, all provide for certain public access to government records. How does the HIPAA Privacy Rule relate to these state laws?

Answer

If a state agency is not a "covered entity", as that term is defined at 45 CFR 160.103, it is not required to comply with the HIPAA Privacy Rule and, thus, any disclosure of information by the state agency pursuant to its state public records law would not be subject to the Privacy Rule.

If a state agency is a covered entity, however, the Privacy Rule applies to its disclosures of protected health information. The Privacy Rule permits a covered entity to use and disclose protected health information as required by other law, including state law. See 45 CFR 164.512(a). Thus, where a state public records law mandates that a covered entity disclose protected health information, the covered entity is permitted by the Privacy Rule to make the disclosure, provided the disclosure complies with and is limited to the relevant requirements of the public records law.

However, where a state public records law only permits, and does not mandate, the disclosure of protected health information, or where exceptions or other qualifications apply to exempt the protected health information from the state law's disclosure requirement, such disclosures are not "required by law" and thus, would not fall within § 164.512(a) of the Privacy Rule. For example, if a state public records law includes an exemption that affords a state agency discretion not to disclose medical or other information where such disclosure would constitute a clearly unwarranted invasion of personal privacy, the disclosure of such records is not required by the public records law, and therefore is not permissible under § 164.512(a). In such cases, a covered entity only would be able to make the disclosure if permitted by another provision of the Privacy Rule.

As an example of how the Privacy Rule would apply in the case where an exemption exists in a freedom of information law, see the December 2000 Privacy Rule preamble discussion regarding the relationship of the Privacy Rule with the federal Freedom of Information Act (64 FR 82482).

HIPAA applicability to protected health information obtained by LHD:

HIPAA privacy regulations permit “covered entities” (such as hospitals, clinical laboratories, nursing homes, and physicians) to provide protected health information to “public health authorities” (such as DCH or LHDs) for certain purposes.

Public Health Authority

“[A]n agency or authority of the United States, a State, a political subdivision of a State or territory, or an Indian tribe, or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, who is responsible for public health matters as part of its official mandate.” HIPAA Privacy Rules, 45 CFR 164.501.

HIPAA privacy standard for uses and disclosures for public health activities for which an authorization or opportunity to agree or object is not required.

“(b) (1) *Permitted disclosures.* A covered entity may disclose protected health information for the public health activities and purposes described in this paragraph to:

(i) A public health authority that is authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions; or, at the direction of a public health authority, to an official of a foreign government agency that is acting in collaboration with a public health authority;

...

(iv) A person who may have been exposed to a communicable disease or may otherwise be at risk of contracting or spreading a disease or condition, if the covered entity or public health authority is authorized by law to notify such person as necessary in the conduct of a public health intervention or investigation.” 45 CFR 164.512.

Note: Several memoranda issued by Director Olszewski concerning the disclosure of protected health information by covered entities to public health authorities are included later in this packet. These memoranda may be provided to health care providers who are reluctant to cooperate in public health surveillance or investigations because of fear of violating the HIPAA Privacy Rule.

7. What information can a LHD share with law enforcement if there is a bioterrorism event or intentional contamination?

Disaster relief situations were accounted for in the final rule of HIPAA at 45 CFR 164.510(b)(4), and discussed in the preambles of both the 12-28-2000 and the 08-14-02 federal register publication of the rule.

“Specifically, we allow covered entities to use or disclose protected health information without individual agreement to federal, state, or local government agencies engaged in disaster relief activities, as well as to private disaster relief or disaster assistance organizations (such as the Red Cross) authorized by law or by their charters to assist in disaster relief efforts, to allow these organizations to carry out their responsibilities in a specific disaster situation.” Federal Register, 12-28-2000, page 82524.

While there is an expectation that health information will be protected to the extent possible, the nature of a disaster situation and the impracticability of obtaining a signed release are recognized. [Preamble, 12-28-2000, page 82524]

In response to a comment (published in the 12-28-2000 preamble) concerning disclosures made to law enforcement in a disaster situation, DHHS notes that the new language of §164.510(b)(4) “allows covered entities to use or disclose protected health information to a public or private entity authorized by law or its charter to assist in disaster relief efforts, for the purpose of coordinating with such entities to notify, or assist in the notification of (including identifying or locating) a family member, an individual’s personal representative, or another person responsible for the individual’s care regarding the individual’s location, general condition, or death.” Page 82665

Also, DHHS discusses in the 08-14-02 preamble, page 53231, that in drafting the rule, individual privacy interests were carefully weighed with the need for identifiable health information for certain public policy and national priority purposes. “[T]he Rule appropriately allows for the reporting of information necessary to ensure public health, such as information about a contagious disease that may be indicative of a bioterrorism event, without individual authorization.”

And, all wrapped up in DHHS, OCR FAQ 397:

Question

Does the HIPAA Privacy Rule permit covered entities to disclose protected health information, without individuals' authorization, to public officials responding to a bioterrorism threat or other public health emergency?

Answer

Yes. The Rule recognizes that various agencies and public officials will need protected health information to deal effectively with a bioterrorism threat or emergency. To facilitate the communications that are essential to a quick and effective response to such events, the Privacy Rule permits covered entities to disclose needed information

to public officials in a variety of ways. Covered entities may disclose protected health information, without the individual's authorization, to a public health authority acting as authorized by law in response to a bioterrorism threat or public health emergency (see 45 CFR 164.512(b), public health activities). The Privacy Rule also permits a covered entity to disclose protected health information to public officials who are reasonably able to prevent or lessen a serious and imminent threat to public health or safety related to bioterrorism (see 45 CFR 164.512(j), to avert a serious threat to health or safety). In addition, disclosure of protected health information, without the individual's authorization, is permitted where the circumstances of the emergency implicates law enforcement activities (see 45 CFR 164.512(f)); national security and intelligence activities (see 45 CFR 164.512(k)(2)); or judicial and administrative proceedings (see 45 CFR 164.512(e)).

And FAQ 491:

Question

May a doctor or hospital disclose protected health information to a person or entity that can assist in notifying a patient's family member of the patient's location and health condition?

Answer

Yes. The HIPAA Privacy Rule permits a covered doctor or hospital to disclose protected health information to a person or entity that will assist in notifying a patient's family member of the patient's location, general condition, or death. See 45 CFR 164.510(b)(1)(ii). The patient's written authorization is not required to make disclosures to notify, identify, or locate the patient's family members, his or her personal representatives, or other persons responsible for the patient's care. Rather, where the patient is present, or is otherwise available prior to the disclosure, and has capacity to make health care decisions, the covered entity may disclose protected health information for notification purposes if the patient agrees or, when given the opportunity, does not object. The covered entity may also make the disclosure if it can reasonably infer from the circumstances, based on professional judgment, that the patient does not object. See 45 CFR 164.510(b)(2).

Even when the patient is not present or it is impracticable because of emergency or incapacity to ask the patient about notifying someone, a covered entity can still disclose a patient's location, general condition, or death for notification purposes when, in exercising professional judgment, it determines that doing so would be in the best interest of the patient. See 45 CFR 164.510(b)(3).

Under these circumstances, for example:

- A doctor may share information about a patient's condition with the American Red Cross for the Red Cross to provide emergency communications services for members of the U.S. military, such as notifying service members of family illness or death, including verifying such illnesses for emergency leave requests.
- A hospital may ask police to help locate and communicate with the family of an individual killed or injured in an accident.
- A hospital may contact a patient's employer for information to assist in locating the patient's spouse so that he/she may be notified about the hospitalization of the patient.

8. What HIPAA protected information can a LHD not share? (if there is a bioterrorism event or intentional contamination)

The DHHS does not intend to impede disaster relief organizations in the critical mission to save lives and reunite loved ones and friends in disaster situations. . [Preamble, 12-28-2000, page 82524.] See above.

The HIPAA Privacy Rule requires a covered entity to disclose only the minimum amount necessary to accomplish the intended purpose of the use, disclosure, or request. 45 CFR §164.502(b)(1)-(2).

Health information concerning conditions such as HIV/AIDS, Substance Abuse, and Mental Health, carries a higher level of privacy protection under specific state and federal laws. These laws would need to be examined to determine whether a heightened level of privacy will continue to protect HIV/AIDS, substance abuse, and mental health information in the event of a bioterrorism event or other disaster.

9. What should a LHD do when a health care facility or practitioner hides behind HIPAA and refuses to share case information?

If the disclosure is required by federal law, Michigan's Public Health Code, or other state law for Public Health Activities, HIPAA permits the disclosure under 45 CFR 164.512(b). (See response to Question 6). HIPAA also permits the disclosure of information that is Required by Law under 45 CFR §164.512(a).

Arguments have been made that because HIPAA merely 'permits' the use or disclosure of protected health information, the covered entity therefore is not required to disclose the requested information. However, the Preamble makes clear that the term 'permit' was used so as not to conflict with state or federal laws that prohibited certain disclosures otherwise allowed under HIPAA. [Preamble, 12-28-2000, page 26.] Moreover, Congress provides in § 1178(2)(B) of the HIPAA statute: "[N]othing in this part shall be construed to invalidate or limit the authority, power, or procedures established under any law providing for the reporting of disease or injury, child abuse, birth or death, public health surveillance, or public health investigation or intervention." See also, 45 CFR § 160.203(c).

Although the facility or practitioner refusing to provide the information would not be in violation of HIPAA, since the disclosure is 'permissive', the refusal to disclose information might be violating disclosures required by state or other law.

10. Does a LHD need to have a release of information form signed by the case subject in order to obtain information about the case from a health care facility /practitioner?

If the information is required by law, or for public health purposes, and is used and disclosed in the manner prescribed by the law (i.e. Public Health Code), a signed authorization is not needed under HIPAA.

If the information is used or disclosed for the purposes of treatment, payment, or health care operations, a signed authorization is not required under HIPAA. (But an authorization may be required under laws protecting the privacy of HIV/AIDS, substance abuse, or mental health information.)

11. Can a LHD share information with another LHD about a case? What information can a LHD not share with another LHD?

See answer to Question 10 above.

12. Are there any situations when a LHD cannot provide information to DCH?

There are many laws and rules requiring the provision of certain protected health information to the DCH. With regard to CDs, DCH and LHDs are partners in statewide disease control and surveillance activities and sharing of information for the purpose of carrying out respective duties would usually be appropriate. However, the LHD might maintain protected health information that is unrelated to the powers or responsibilities of DCH and thus, would not be provided to DCH.

References & Resources

Michigan Public Health Code, MCL 333.1101 *et seq.* See Parts 22 (State Department of Public Health), 24 (local health departments), 51 (Prevention and Control of Diseases and Disabilities, General Provisions), 52 (Hazardous Communicable Diseases).

Freedom of Information Act, MCL 15.231 *et seq.*

The Public Health Code, the Freedom of Information Act, and other state laws can be found on the website of the Michigan Legislature www.michiganlegislature.org.

Department of Community Health Administrative Rules, Communicable and Related Diseases, Michigan Administrative Code, R 325.171 *et seq.*

Administrative Rules of state departments can be found at the website of the state Office of Regulatory Reform www.michigan.gov/orr.

Health Insurance Portability and Accountability Act (HIPAA) Privacy Regulations. For regulations, FAQs, and educational materials on HIPAA Privacy Regulations, go to <http://www.hhs.gov/ocr/hipaa/> In particular, download the publication “HIPAA Privacy Rule and Public Health”, which provides guidance from CDC and the U.S. Department of Health and Human Services to help public health agencies and others understand and interpret their responsibilities under the Privacy Rule.
<http://www.cdc.gov/mmwr/preview/mmwrhtml/m2e411a1.htm>

Infectious Disease Court Forms.

To download forms approved by the State Court Administrative Office for use in Michigan courts for commitment and testing for infectious diseases, go to <http://courts.michigan.gov/scao/courtforms/infectiousdisease/inindex.htm>
The forms are in PDF and can be filled in on-line and printed or they can be downloaded. They must be filed in the family division of the circuit court.

Centers for Disease Control – Public Health Practice Program Office, Public Health Law Program <http://www.phppo.cdc.gov/od/phlp/> The Public Health Law Program leads CDC’s efforts to improve scientific understanding of the interaction between law and public health practice. The Program’s website has many useful resources on public health law as related to disease surveillance and control and bioterrorism.

STATE OF MICHIGAN
DEPARTMENT OF COMMUNITY HEALTH

**ORDER FINDING IMMINENT DANGER
TO THE PUBLIC HEALTH
AND
REQUIRING CORRECTIVE ACTION**

This order is made pursuant to Section 2251 of the Public Health Code, Public Act 368 of 1978, being MCL 333.2251.

Matters of concern to the health of Michigan citizens having been brought to the attention of the Director of the Department of Community Health, and the Director having made the following determinations:

- 1) On March 12, 2004, an individual with measles landed in Detroit Michigan at the Detroit Metropolitan Airport, McNamara Terminal, on Northwest Flight 39, from Amsterdam to Detroit.
- 2) This individual is believed to have been contagious during the flight in question.
- 3) This individual was in contact with other passengers on the flight during the approximate 8 hours of flight time.
- 4) Measles is highly infectious and spread by airborne route, thus posing a serious threat of transmittal to other passengers who were on Flight 39 with this individual.
- 5) This individual, and many other passengers, disembarked from Flight 39 in Detroit.

- 6) This individual then flew to Cedar Rapids, Iowa, where he was identified as having measles by Iowa's state health department after he disembarked there.
- 7) Rare but serious consequences from measles include acute encephalitis, which can result in permanent brain damage and death.
- 8) Risk or complications from measles are higher in immunocompromised people, pregnant women, and infants under one year of age.
- 9) Available data suggests that measles vaccine if given within 72 hours of measles exposure will provide the best protection for many individuals who are not currently immunized.
- 10) To protect the public health, and prevent and control the spread of infectious disease, it is essential that individuals on Northwest Flight 39 be advised of exposure so that they may seek prompt medical attention.
- 11) The Michigan Department of Community Health is able to contact the individuals who were exposed to measles during this flight only if it has the manifest of individuals on Northwest Flight 39 and information that contains passenger names and contact information.
- 12) This condition could reasonably be expected to cause death, disease, or serious physical harm immediately or before the imminence of the danger can be eliminated through enforcement procedures otherwise provided;
- 13) This situation constitutes an imminent danger to the health or lives of residents of the State of Michigan; and

- 14) This determination is based on information provided by Mary Grace Stobierski, D.V.M, Manager, Infectious Disease Epidemiology Section of the Michigan Department of Community Health.

Now, Therefore, It Is Hereby Ordered that:

- A) Northwest Airlines provide to a representative of the Michigan Department of Community Health a copy of its manifest for Northwest Flight 39 from Amsterdam to Detroit on March 12, 2004 with names and contact information for all individuals on board, including crew members.
- B) A copy of this order and the information from the manifest shall be provided by the Department to the Centers for Disease Control and Prevention so that it may assist the Department with investigating this matter and acting to protect the public health.

Pursuant to Section 2261 of the Public Health Code, Public Act 368 of 1978, being MCL 333.2261, a person who violates this order is guilty of a misdemeanor punishable by imprisonment for not more than 6 months, or a fine of not more than \$200.00 or both.

Dated: March 14, ²⁰⁰⁴~~2003~~



Janet Olszewski, Director,
Michigan Department of Community Health



STATE OF MICHIGAN
DEPARTMENT OF COMMUNITY HEALTH
LANSING

JENNIFER M. GRANHOLM
GOVERNOR

JANET OLSZEWSKI
DIRECTOR

DATE: October 31, 2003

TO: Fred Shaw, Director
Public Health Legal Preparedness Clearinghouse
Centers for Disease Control

FROM: Denise Chrysler, Director *D.C.*
Joe Baumann, Policy Analyst *J.B.*
Office of Legal Affairs

RE: Legal Authority of Michigan Department of
Community Health to Respond to a SARS Outbreak

This is in response to a telephone call from Karen McKie requesting information about the legal authority of Michigan public health officials to quarantine individuals who test positive for SARS.

The Michigan Public Health Code, MCL 333.1101 *et seq.*, and rules thereunder, 1999 ACS R 325.171 *et seq.*, establish the power and responsibilities of the Michigan Department of Community Health (MDCH) and local public health (LPH) departments to prevent and control the spread of disease. MDCH and LPH officers have numerous powers they may use to control SARS and other diseases and protect the general public.

Issuance of Emergency Orders to Control an Epidemic or an Imminent Danger.

Both MDCH and LPH departments are authorized to issue emergency orders to control an epidemic. In this regard, if the Director of MDCH

determines that control of an epidemic is necessary to protect the public health, the director, by emergency order, may prohibit the gathering of people for any purpose and may establish procedures to be followed during the epidemic to insure continuation of essential public health services and enforcement of health laws.

Section 2253.

Similarly, if a LPH officer determines that control of an epidemic is necessary to protect the public health, he or she may issue an emergency order prohibiting the gathering of people and establish procedures to be followed by persons, including a local governmental entity, during the

epidemic to insure continuation of essential public health services and enforcement of health laws. Section 2453(1). An “epidemic” means “any increase in the number of cases, above the number of expected cases, of any disease, infection, or other condition in a specific time period, area, or demographic segment of the population.” R 325.171(g).

Additionally, both MDCH and a LPH official may issue orders to respond to an imminent danger to health or lives. Sections 2251, 2451. “Imminent danger” means “a condition or practice which could reasonably be expected to cause death, disease, or serious physical harm immediately or before the imminence of the danger can be eliminated through enforcement procedures otherwise provided.” Sections 2251(4)(a), 2451(3)(a).

Section 2251 provides:

- (1) Upon a determination that an imminent danger to the health or lives of individuals exists in this state, the director immediately shall inform the individuals affected by the imminent danger and issue an order which shall be delivered to a person authorized to avoid, correct, or remove the imminent danger or be posted at or near the imminent danger. The order shall incorporate the director’s findings and require immediate action necessary to avoid, correct, or remove the imminent danger. The order may specify action to be taken or prohibit the presence of individuals in locations or under conditions where the imminent danger exists, except individuals whose presence is necessary to avoid, correct, or remove the imminent danger.

Section 2451, which applies to local health departments, is identical, except the LPH official’s authority is limited to an imminent threat in an area served by the local health department.

Under conditions of “imminent danger”, in addition to issuing orders, MDCH’s Director (alone) has extensive controlling powers to take full charge of the administration of state and local health laws, rules, regulations and ordinances. Section 2251(3).

Upon the failure of a person to comply promptly with an order issued by MDCH or a LPH official, as applicable, MDCH or the LPH official may petition a court having jurisdiction to restrain a condition or practice causing the imminent danger or to require action to avoid, correct, or remove the imminent danger. Sections 2251(2), 2451(2).

Issuance of a Warning Notice.

Sections 5201 to 5238 of the Public Health Code establish powers, responsibilities, and procedures concerning an individual who is a carrier and a health threat to others. A “carrier” means “[a]n individual who serves as a potential source of infection and who harbors or who the department reasonably believes to harbor a specific infectious agent or a serious communicable disease or infection, whether or not there is present discernible disease.” Section 5201(1)(a). MDCH has promulgated rules that designate and classify serious communicable disease. Although SARS or smallpox are not explicitly listed in the applicable rule, both diseases would fall under subsection (s) of this rule pertaining to the “unusual occurrence, outbreak, or epidemic

of any condition, including nosocomial infections.” Rule 325.172(1)(s).¹ “Health threat to others” means “that an individual who is a carrier has demonstrated an inability or unwillingness to conduct himself or herself in such a manner as to not place others at risk of exposure to a serious communicable disease or infection.” Section 5201(b). “Health threat to others” may be shown by the individual’s behavior, evidence of careless disregard for transmission or exposure of others, or misrepresentation about disease status before engaging in behavior that puts others at risk. *Id.*

Under section 5203, MDCH or the LHD shall issue a warning notice to such an individual requiring that the individual cooperate with MDCH or the LPH department in efforts to prevent or control transmission of serious communicable diseases or infections. The warning notice may require the individual to participate in education, counseling, or treatment programs, and to undergo medical tests to verify the person’s status as a carrier. The section specifies the form of the warning notice, requirements for service, and contents, including a statement that unless the individual takes the action requested in the warning notice, MDCH or the LPH department shall seek a court order. Absent an emergency, the individual has certain rights, including the right to a hearing, before a court can issue an order. These rights must be stated in the warning notice.

Involuntary Detention and Treatment.

Both MDCH and a LPH department are authorized to “provide for the involuntary detention and treatment of individuals with hazardous communicable disease in the manner prescribed in sections 5201 to 5238 [of the Public Health Code].” Section 2453(2).

If MDCH or the LPH department knows, or has reasonable grounds to believe, that the individual has failed or refused to comply with a warning notice, then MDCH or the LPH department may petition the court for an order. Section 5205 sets out the procedural requirements and the individual’s rights, including the right to a hearing and the right to be represented by an attorney. An attorney is appointed for indigent individuals. The hearing must be set within 14 days of the date the petition was filed. If the court finds that the allegations in the petition are proven by clear and convincing evidence, the court may issue 1 or more of the following orders:

- (a) An order that the individual participate in a designated education program.
- (b) An order that the individual participate in a designated counseling program.
- (c) An order that the individual participate in a designated treatment program.
- (d) An order that the individual undergo medically accepted tests to verify the individual's status as a carrier or for diagnosis.
- (e) An order that the individual notify or appear before designated health officials for verification of status, testing, or other purposes consistent with monitoring.
- (f) An order that the individual cease and desist conduct that constitutes a health threat to others.

¹ Michigan Attorney General Michael Cox recently opined in a formal opinion that, while not explicitly listed, both smallpox and SARS, would fall under subsection (s) of Rule 325.172(1). Atty Gen Op No. 7141 (Issued 10/6/03).

- (g) An order that the individual live part-time or full-time in a supervised setting for the period and under the conditions set by the circuit court.
- (h) Subject to [section 2506(8)], an order that the individual be committed to an appropriate facility for the period and under the conditions set by the circuit court. A commitment ordered under this subdivision shall not be for more than 6 months, unless the director of the facility, upon motion, shows good cause for continued commitment.
- (i) Any other order considered just by the circuit court.

An individual has the right to seek appellate review of an order, however, an order may not be stayed except upon motion for good cause.

The court can enter an order committing an individual to an appropriate facility only if the court considers the recommendation of a commitment review panel appointed by the court that consists of 3 physicians from a list submitted by MDCH. The section sets out criteria for physicians on the review panel – for example, at least two of the physicians shall have training and experience in the diagnosis and treatment of serious communicable diseases and infections. The commitment panel must (1) review the record of the proceeding, (2) interview the individual or document the reasons the individual was not interviewed, and (3) recommend either commitment or an alternative or alternatives to commitment, and document the reasons for the recommendation. There are also provisions for petition and review by a commitment panel as to whether or not the individual’s commitment should be terminated.

The State Court Administrator’s Office (SCAO) within the Michigan Supreme Court promulgates standard forms for use by attorneys and judges that can be found at: <http://courts.michigan.gov/scao/courtforms/infectiousdisease/infindex.htm>. The following SCAO forms are attached for involuntary detention and treatment actions under section 5205 of the Public Health Code: Petition for Treatment of Infectious Disease, Notice of Hearing on Petition for Treatment of Infectious Disease, Order Following Hearing on Petition for Treatment of Infectious Disease, Petition for Continued Commitment for Treatment of Infectious Disease and Order to Reconvene Commitment Review Panel, and Order Following Hearing on Petition for Continued Commitment for Treatment of Infectious Disease.

Emergency Custody, Detention, and Treatment of the Individual.

Section 5207 covers emergency health threats of a carrier to others. To protect the public health in an emergency, upon the filing of an affidavit by MDCH or a LPH officer, the circuit court may order an MDCH representative, LPH officer, or peace officer to take an individual whom the court has reasonable cause to believe is a carrier and is a health threat to others into custody. The order would authorize the transport of the individual to an appropriate emergency care or treatment facility for observation, examination, testing, diagnosis, or treatment and, if determined necessary by the court, temporary detention. If the individual is already institutionalized in a facility, the court may order the facility to temporarily detain the individual.

An order for emergency custody may be issued in an *ex parte* proceeding upon an affidavit of a department representative or a local health officer. An emergency order may be requested and

executed on any day and at any time, and must be served upon the individual who is the subject of the order immediately upon apprehension or detention.

An individual temporarily detained under an emergency order shall not be detained longer than 72 hours, excluding Saturdays, Sundays, and legal holidays, without a court hearing to determine if the temporary detention should continue. Notice of a hearing must be served upon the individual not less than 24 hours before the hearing is held. The notice shall contain certain information, including the factual basis for the detention, the individual's due process rights at a hearing, and the right to counsel, including an indigent individual's right to appointed counsel.

At the hearing, if the court finds, by a preponderance of the evidence, that the individual would pose a health threat to others if released, it may order that the individual continue to be temporarily detained. However, the court's order for temporary detention cannot continue longer than 5 days, unless a petition is filed under section 5205, described above, for involuntary detention or treatment.

The following SCAO forms are attached for emergency actions under section 5207 of the Public Health Code: Petition and Ex Parte Order for Transport and/or Temporary Detention, Affidavit to Accompany Petition for Transport and/or Temporary Detention, Notice of Hearing on Petition for Temporary Detention, and Order Following Hearing on Petition to Continue Temporary Detention.

Conclusion.

We believe that Michigan's Public Health Code provides sufficient power so that public health officials can assure the safety of the public and prevent outbreaks once the existence of a carrier has been identified. Moreover, the provisions of the Public Health Code that cover epidemics and the power of MDCH and LPH department to prevent and control communicable diseases, make it clear that these provisions do not limit their power, or the power of the court, to deal with the prevention and control of communicable diseases and infections. Sections 2253(1), 2453, 5209. Consequently, MDCH and LPH departments may exercise authority under any other federal or state laws – including any emergency preparedness laws – that contain provisions for the protection of the public health and the control of disease.

If you have questions or need further information about Michigan's laws to prevent and control the outbreak of disease, including SARS, please do not hesitate to ask.

cc: Jan Christensen
Ronald J. Styka
David Johnson, M.D.
Matthew Boulton

Attachments

g:\legal affairs\ola assigns\03-032\Memo Shaw CDC re legal auth of MDCH to respond to SARS outbreak

Infectious Disease Court Forms
Approved by the State Court Administrative Office
Must be filed in family division of circuit court

Affidavit to Accompany Petition for Transport and/or Temporary Detention. PC 109

Appeal of Commitment and Order to Reconvene Commitment Review Panel. PC 113.

Notice of Hearing on Petition for Temporary Detention. PC 111.

Notice of Hearing on Petition for Testing of Infectious Disease. MC 73.

Notice of Hearing on Petition for Treatment of Infectious Disease. PC 105.

Order Appointing Commitment Review Panel. PC 107.

Order Following Appeal of Commitment for Treatment of Infectious Disease. PC 114.

Order Following Hearing on Petition for Continued Commitment for Treatment of Infectious Disease. PC 116.

Order Following Hearing on Petition for Testing of Infectious Disease. MC 74.

Order Following Hearing on Petition for Treatment of Infectious Disease. PC 106.

Order Following Hearing on Petition to Continue Temporary Detention. PC 112.

Petition and Ex Parte Order for Transport and/or Temporary Detention. PC 110.

Petition for Continued Commitment for Treatment of Infectious Disease and Order to Reconvene Commitment Review Panel. PC 115.

Petition for Testing of Infectious Disease. MC 72.

Petition for Treatment of Infectious Disease. PC 104.

Recommendation of Commitment Review Panel. PC 108.

STATE OF MICHIGAN JUDICIAL CIRCUIT COURT COUNTY	AFFIDAVIT TO ACCOMPANY PETITION FOR TRANSPORT AND/OR TEMPORARY DETENTION	CASE NO.
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In the matter of _____

1. I believe _____ to be a carrier of
Name (type or print) _____ because of the following facts:
specify infectious agent or serious communicable disease or infection

2. I believe the individual is a health threat to others because of the following facts: _____

3. The individual requires the following services at an emergency care or treatment facility: _____

4. An emergency order is necessary because of the following facts: _____

Date

Affiant's signature

Address

Name (type or print)

City, state, zip Telephone no.

Subscribed and sworn to before me on _____, _____ County, Michigan.
Date

My commission expires: _____ Signature: _____
Date Notary public

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STATE OF MICHIGAN JUDICIAL CIRCUIT COURT COUNTY	APPEAL OF COMMITMENT AND ORDER TO RECONVENE COMMITMENT REVIEW PANEL	CASE NO.
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In the matter of _____

CLAIM OF APPEAL

1. I was committed to and am presently in _____,
Name of facility
as ordered by the court on _____.
Date

2. I claim an appeal of my commitment.

I REQUEST that the court reconvene my commitment review panel for a recommendation as to whether my commitment should be terminated. I understand that the court will reconvene the commitment review panel as soon as possible, but not more than 14 days after I have filed this claim of appeal.

Date

Signature

ORDER

1. Date of Hearing: _____ Judge: _____
Bar no.

IT IS ORDERED:

2. The previously appointed commitment review panel consisting of _____,
Name
_____, and _____,
Name Name
shall reconvene and report to the court in writing within 14 days of the date of this order.

3. The panel shall do the following:

- a. Review the appeal and any other information considered relevant by the commitment review panel.
- b. Interview the individual, or document the reasons why the individual was not interviewed.
- c. Recommend to the circuit court either termination or continuation of the commitment and document the reasons for the recommendation.

Date

Judge

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STATE OF MICHIGAN JUDICIAL CIRCUIT COURT COUNTY	NOTICE OF HEARING ON PETITION FOR TEMPORARY DETENTION	CASE NO.
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In the matter of _____

1. This court has been requested to continue its ex parte order temporarily detaining you in a facility.

2. A hearing to determine whether temporary detention should continue will be held:

at _____
Location

on _____
Date Time

before Hon. _____
Bar no.

3. The grounds and underlying facts upon which continued detention is sought are set forth in the attached affidavit.

4. You have the right to be present at the hearing and to cross-examine witnesses.

5. You have the right to be represented by an attorney at all stages of the proceedings. If you want an attorney, you should hire one immediately so that s/he will be prepared on the hearing date. If you are unable to pay the cost of an attorney, the court shall appoint an attorney for you.

Date

Court clerk

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STATE OF MICHIGAN JUDICIAL CIRCUIT COURT COUNTY	NOTICE OF HEARING ON PETITION FOR TREATMENT OF INFECTIOUS DISEASE	CASE NO.
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In the matter of _____

1. This court has received the attached petition for treatment of infectious disease.
2. A hearing on the petition will be held:
at _____
Location
on _____
Date Time
before Hon. _____
Bar no.
3. You have the right to be present at the hearing and to cross-examine witnesses.
4. You have the right to be represented by an attorney at all stages of the proceedings. If you want an attorney, you should hire one immediately so that s/he will be prepared on the hearing date. If you are unable to pay the cost of an attorney, the court shall appoint an attorney for you.
5. You and the petitioners may waive in writing notice of hearing and agree to have the court hear the petition immediately.
6. If the petition requests the court to appoint a commitment review panel, you may notify the court that you want a physician of your choice appointed to the panel.

Date

Court clerk

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STATE OF MICHIGAN JUDICIAL CIRCUIT COURT COUNTY	ORDER APPOINTING COMMITMENT REVIEW PANEL <input type="checkbox"/> Original <input type="checkbox"/> Modified	CASE NO.
--	--	-----------------

In the matter of _____

1. Date of Hearing: _____ Judge: _____ Bar no.

2. The court received a petition for treatment of infectious disease requesting that the individual be committed to

Name of facility

3. The court received a motion from the above named individual requesting that Dr. _____, a physician, be appointed to the commitment review panel previously appointed by the court.

IT IS ORDERED:

4. The following physicians are appointed to the commitment review panel.

Name	Address	City	State	Zip

5. Dr. _____ is discharged from the panel and the following physician is appointed to the commitment review panel as requested by the individual.

Name	Address	City	State	Zip

6. The commitment review panel shall
- a. review the need for commitment of the individual to a health facility.
 - b. review the record of the proceeding.
 - c. interview the individual, or document the reasons why the individual was not interviewed.
 - d. recommend either commitment or an alternative or alternatives to commitment and document the reasons for the recommendation.
 - e. make its recommendation to the court in writing before _____
Date of hearing

Judge

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Approved, SCAO

STATE OF MICHIGAN JUDICIAL CIRCUIT COURT COUNTY	ORDER FOLLOWING APPEAL OF COMMITMENT FOR TREATMENT OF INFECTIOUS DISEASE	CASE NO.
---	--	----------

In the matter of _____

1. Date of Hearing: _____ Judge: _____

Bar no.

2. The above named individual has filed a claim of appeal as to the order dated _____

committing him/her to _____

Name of facility

THE COURT FINDS:

3. The commitment review panel reconvened by order of the court and has filed a report with the court recommending that the commitment of the individual be continued terminated.

IT IS ORDERED:

4. The appeal is denied and commitment is continued as previously ordered.

5. The individual is discharged from the facility.

Date

Judge

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STATE OF MICHIGAN JUDICIAL CIRCUIT COURT COUNTY	ORDER FOLLOWING HEARING ON PETITION FOR CONTINUED COMMITMENT FOR TREATMENT OF INFECTIOUS DISEASE	CASE NO.
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In the matter of _____

1. Date of Hearing: _____ Judge: _____ Bar no.

2. A petition has been filed asserting that the above named individual requires continued commitment.

3. Notice of hearing has been given according to law.

4. A commitment review panel has filed its recommendation for continued commitment of the individual.
 an alternative to commitment of the individual.

THE COURT FINDS:

- 5. The allegations of the petition have not been proven by clear and convincing evidence. continued commitment.
- 6. By clear and convincing evidence that the individual requires an alternative to commitment.

IT IS ORDERED:

7. The individual shall continue commitment at _____
Name of facility

8. Be released from _____ and participate in the following
Name of facility
alternative treatment: _____

9. The petition is dismissed and the individual shall be released from the facility.

Date

Judge Bar no.

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STATE OF MICHIGAN JUDICIAL DISTRICT COURT JUDICIAL CIRCUIT COURT COUNTY	ORDER FOLLOWING HEARING ON PETITION FOR TESTING OF INFECTIOUS DISEASE	CASE NO.
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Court address

Court telephone no.

Petitioner name, address, and telephone no.

v

Respondent name, address, and telephone no.

1. Date of Hearing: _____ Judge: _____

Bar no.

2. A petition has been filed asserting that the above named individual was requested to undergo testing for infectious disease in accordance with MCL 333.5205 and refused to do so.

3. Notice of hearing has been given according to law.

THE COURT FINDS:

- 4. The allegations of the petition have not been proven by clear and convincing evidence.
- 5. By clear and convincing evidence that the individual has refused to comply with the request for testing, that the employee, officer, or arresting individual named in the petition sustained a percutaneous, mucous membrane, or open wound exposure to the blood or body fluids of the individual, and that the above named individual could have transmitted HIV, HBV, and/or HCV to the employee, officer, or arresting individual.

IT IS ORDERED:

- 6. The petition is dismissed.
- 7. The individual shall undergo testing for
 - HIV
 - HBV
 - HCV
 by _____
Name of local health department or health care provider
 - a. The employer shall transport the individual within 24 hours to the agency/facility named above for testing.
 - b. A representative of the agency or facility shall within 24 hours come to where the individual is held or housed to take blood or other body fluid sample for testing.
- c. The local health department or designated health care provider that performs the test(s) may charge the reasonable and customary charges for each test. The above named individual shall pay the cost associated with implementing this order including the charges for each test.
- d. Within 2 days after the test results are obtained, the local health department or designated health care provider shall transmit the test results directly to the employee, officer, or arresting individual or, upon request, to his or her primary care physician or another health professional.

Date

Judge

STATE OF MICHIGAN JUDICIAL CIRCUIT COURT COUNTY	ORDER FOLLOWING HEARING ON PETITION FOR TREATMENT OF INFECTIOUS DISEASE	CASE NO.
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In the matter of _____

1. Date of Hearing: _____ Judge: _____ Bar no.

2. A petition has been filed asserting that the above named individual is a carrier and health threat to others.

3. Notice of hearing has been given according to law.

4. A commitment review panel has filed its recommendation for commitment of the individual.
 an alternative to commitment of the individual.

THE COURT FINDS:

5. The allegations of the petition have not been proven by clear and convincing evidence.

6. By clear and convincing evidence that

a. the individual is a carrier of _____, an infectious agent
or serious communicable disease or infection, and the individual is a health threat to others.

b. the individual has failed or refused to comply with the warning notice.

c. the individual was not given a written warning notice because an emergency existed.

IT IS ORDERED:

7. The individual shall

a. participate in education counseling treatment programs at _____
Name of agency or facility

b. present him/herself within 24 hours at _____
Name of agency or facility
_____ and undergo tests to verify his/her status as a carrier or for diagnosis purposes.

c. appear within 24 hours at _____
Name of agency or facility
_____ for verification of status, testing, or other purposes consistent with monitoring.

(PLEASE SEE OTHER SIDE)

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d. immediately and until further order of the court, cease and desist conduct that constitutes a health threat to others, including but not limited to _____

e. live part-time or full-time in a supervised setting at _____

f. be committed to _____
Name of facility
for not more than 6 months under the following conditions: _____

g. other: _____

8. The petition is dismissed and the individual shall be released from any facility where s/he is being temporarily detained by court order.

Date

Judge

STATE OF MICHIGAN JUDICIAL CIRCUIT COURT COUNTY	ORDER FOLLOWING HEARING ON PETITION TO CONTINUE TEMPORARY DETENTION	CASE NO.
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In the matter of _____

1. Date of Hearing: _____ Judge: _____ Bar no.

2. A petition and affidavit have been filed by a local health officer Community Health Department representative asserting that an emergency exists. The court issued an ex parte order for immediate temporary detention of the individual.

THE COURT FINDS:

3. Notice of hearing was given to the individual.

4. The individual is temporarily detained at _____
Name of facility

5. There is is not a preponderance of evidence that the individual would pose a threat to others if not temporarily detained in a facility.

IT IS ORDERED:

6. The individual shall continue to be temporarily detained at _____
Name of facility where presently found
or other appropriate emergency care or treatment facility.

a. A petition for treatment of infectious disease of the individual has been filed with this court and the facility shall continue temporary detention of the individual until the further order of the court.

b. Unless a petition for treatment of infectious disease of the individual is filed with the court, the facility shall discharge the individual five days from the date of this order.

7. The individual is discharged from the facility.

Date

Judge

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STATE OF MICHIGAN JUDICIAL CIRCUIT COURT COUNTY	PETITION AND EX PARTE ORDER FOR TRANSPORT AND/OR TEMPORARY DETENTION	CASE NO.
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In the matter of _____

PETITION

1. I, _____, am a local health officer
Name (type or print)
 State Community Health Department representative and make
this affidavit in respect to, _____, who is a minor
Name (type or print) an adult and who resides in
_____ County at _____
Address City
_____ and who is presently found at _____
State Zip Address, location, or facility

2. An emergency exists and there is reasonable cause to believe that the individual is a carrier and a health threat to others for the reasons stated in the attached affidavit.

I REQUEST:

3. the individual be taken into custody and transported to _____,
Name of facility
an emergency care or treatment facility, for observation. examination. testing. diagnosis. treatment.
4. the individual be detained temporarily at the facility and a hearing be held within the next 72 hours to determine whether temporary detention should continue up to five days, and longer if a petition for treatment of an infectious disease is filed within that five days.

I declare that this petition has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Date

Signature

Address

Name (type or print)

City, state, zip

Telephone no.

ORDER

THE COURT FINDS:

5. An affidavit has been filed in compliance with Section 5207 of the Public Health Code.
6. Reasonable cause exists to believe that there is a substantial likelihood the individual is a carrier and a health threat to others.

(PLEASE SEE OTHER SIDE)

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7. There is an emergency which requires the protection of public health.

IT IS ORDERED:

8. The individual be taken into protective custody by a community health department representative local public health officer peace officer and transported to _____,
 Name of facility
 or to another appropriate emergency care or treatment facility, for
 observation, examination, testing, diagnosis, treatment, and temporary detention.

9. The _____ facility shall detain the individual
 Name of facility
 for no longer than 72 hours, excluding Saturdays, Sundays, and legal holidays, unless otherwise ordered by the court.

10. The person transporting the individual shall promptly notify the court of the facility where the individual has been received and temporarily detained.

11. A copy of this order shall be served upon the individual immediately upon apprehension or detention.

Date

Judge Bar no.

CERTIFICATE OF SERVICE

I certify that immediately upon apprehension/detention of the individual, I personally served on him/her a copy of the this petition and order.

Date

Signature

Title

NOTICE OF TIME OF TEMPORARY DETENTION

TO THE CIRCUIT COURT:

You are notified that the individual was detained at _____
 Place and location

on _____ at _____ m.
 Date Time

Date

Signature

NOTE: This notice must be promptly filed with the circuit court.

STATE OF MICHIGAN JUDICIAL CIRCUIT COURT COUNTY	PETITION FOR CONTINUED COMMITMENT FOR TREATMENT OF INFECTIOUS DISEASE AND ORDER TO RECONVENE COMMITMENT REVIEW PANEL	CASE NO.
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In the matter of _____

1. I am director of the _____

Name of facility

2. The above named individual was committed to this facility for a period of _____ by court order

Number of days or months

dated _____

3. The individual requires continued commitment for the following reasons: _____

I REQUEST that the court issue an order to continue commitment of the individual at the above named facility for a period of

_____ and under the conditions set by the court.

Number of days or months

I declare that this petition has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Date

Signature of director

Address

Name (type or print)

City, state, zip

Telephone no.

ORDER

1. Date of Hearing: _____ Judge: _____

IT IS ORDERED:

2. The previously appointed commitment review panel consisting of _____, _____, and _____

shall reconvene and report to the court in writing within 14 days of the filing of this petition.

3. The panel shall do the following:

- a. Review the petition and any other information considered relevant by the commitment review panel.
- b. Interview the individual, or document the reasons why the individual was not interviewed.
- c. Recommend to the circuit court either termination or continuation of the commitment and document reasons for the recommendation.

Date

Judge

Do not write below this line - For court use only

STATE OF MICHIGAN JUDICIAL DISTRICT COURT JUDICIAL CIRCUIT COURT COUNTY	PETITION FOR TESTING OF INFECTIOUS DISEASE	CASE NO.
--	---	-----------------

Court address _____ Court telephone no. _____

Petitioner name, address, and telephone no.

v

Respondent name, address, and telephone no.

1. I, the employer, make this petition in respect to,

_____, who is a court employee. local corrections officer.
 Name (type or print) county employee. police officer.
 other individual making lawful arrest.

2. The above named employee received training in the transmission of bloodborne diseases required under MCL 333.5204(1)

on _____ at _____
 Date Place of training

3. On _____, the above named employee made a request to me in accordance with
Date

MCL 333.5204 that _____ be tested for HIV, HBV, and/or HCV
 Name of arrestee, correctional facility inmate, parolee, or probationer

infection because the employee determined that he/she had sustained a percutaneous, mucous membrane, or open wound exposure to the blood or body fluids of the above named test subject. A copy of the request is attached.

4. The proposed test subject refused to undergo 1 or more of the tests specified in the request.
 5. The reasons for the determination that exposure, as described in the attached request, could have transmitted HIV, HBV, and or HCV are: (include a description of the exposure to blood or other body fluids)

IREQUEST:

6. A hearing be held and the court find that the allegations are true.
 7. The court order the test subject to undergo testing for HIV, HBV, and/or HCV infection under MCL 333.5205.

I declare that this petition has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Date

Petitioner signature

Attorney signature

Name (type or print)

Address

City, state, zip Telephone no.

STATE OF MICHIGAN JUDICIAL CIRCUIT COURT COUNTY	PETITION FOR TREATMENT OF INFECTIOUS DISEASE	CASE NO.
--	---	-----------------

In the matter of _____

1. I, _____, am a local health officer
Name (type or print) State Community Health Department representative
and make this petition in respect to, _____, who is a minor
Name (type or print) an adult and who

resides at _____
Address City State Zip

and who is presently found at _____
Address or location

2. An ex parte detention order was issued by this court on _____
Date

3. The individual is believed to be a carrier as to _____
specify infectious agent or serious communicable disease or infection

4. On _____ a written warning notice was sent to the individual requiring
Date
him/her to cooperate with the Community Health Department or local health department to prevent or control transmission of
_____ which is a serious communicable disease or infection.

The individual has failed or refused to comply with the warning notice.

5. The individual is a health threat to others because of the demonstrated inability or unwillingness to conduct himself or herself in such a manner as to not place others at risk of exposure to the serious communicable disease or infection. The health threat to others is shown by:

- a. Behavior by the carrier that has been demonstrated epidemiologically to transmit, or that evidences a careless disregard for transmission of, a serious communicable disease or infection to others.
- b. A substantial likelihood that the carrier will transmit a serious communicable disease or infection to others, as evidenced by the carrier's past behavior or statements made by the carrier that are credible indicators of the carrier's intention to do so.
- c. Affirmative misrepresentation by the carrier of his or her status as a carrier before engaging in behavior that has been demonstrated epidemiologically to transmit the serious communicable disease or infection.
- d. Other: (explain) _____

(PLEASE SEE OTHER SIDE)

Do not write below this line - For court use only

6. This conclusion is based upon:

a. My personal observation of the individual doing the following acts and saying the following things: _____

b. Conduct and statements I have been informed that others have seen or heard: _____

7. An emergency order is not sought and before issuing the warning notice, the following steps were taken to alleviate the health threat to others: _____

I REQUEST:

8. A hearing be held and the court find that the individual is a health threat to others and/or has failed or refused to comply with a warning notice.

9. The court order that the individual:

a. participate in the following designated programs: education. treatment. counseling.

b. undergo tests to verify his/her status as a carrier or for diagnosis.

c. appear at _____ for verification of status,
Name of agency or facility
testing, or other purposes consistent with monitoring.

d. cease and desist conduct that constitutes a health threat to others.

e. live part-time or full-time in a supervised setting at _____
Place

f. other: _____

10. The court appoint a commitment review panel and commit the individual to _____
Name of facility

I declare that this petition has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Date

Attorney signature

Petitioner signature

Name (type or print)

Name (type or print)

Address

Address

City, state, zip Telephone no.

City, state, zip Telephone no.

8. We recommend the following alternative(s) to commitment: _____

The reasons for this recommendation are: _____

9. We recommend continuation of the commitment as ordered on _____
Date

for the following reasons: _____

10. We recommend termination of the current commitment as ordered on _____
Date

for the following reasons: _____

I certify that I am a physician licensed in the state of Michigan. I declare that this report has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Date

Signature

Name (type or print)

Address

City, state, zip Telephone no.

Date

Signature

Name (type or print)

Address

City, state, zip Telephone no.

Date

Signature

Name (type or print)

Address

City, state, zip Telephone no.

Michigan Department of Community Health
 Organization Chart 12/8/2003
 HIPAA Covered Entities Updated 12/8/2003

Michigan Developmental Disabilities Council

Director
 Janet Olszewski

Chief Deputy Director
 M. Ezzo

Surgeon General
 K. Wisdom MD, MS

Office of Services
 to the Aging
 S. Gile

Administrative
 Officer for
 Operations
 N. Lyon

Bureau of Human
 Resources

Communication, Training
 and Performance Support
 Division

Human Resources Division

Bureau of Budget
 and Audit

Budget & Contracts
 Division
 Office of Audit

Bureau of
 Finance

Accounting Division
 Medicaid, Mental Health,
 and MAIN Support Division

Administrative
 Tribunal and
 Appeals Division

Medical Services
 Administration
 P. Reinhart

Bureau of Medicaid Policy
 and Quality Assurance

Program/Policy Division

Actuarial Division

Office of Medical Affairs

Bureau of Medicaid
 Financial
 Management

Medical Payments
 Division

Revenue and
 Reimbursement Division

Hospital & Health Plan
 Reimbursement Division

LTC Reimbursement and
 Rate Setting Section

Program Investigation
 Section

Bureau of Medicaid
 Program Operations

Pharmacy Division

Prior Authorization Division

Customer Service Division

Comparative Plan Division

Health Policy,
 Regulation and
 Professions
 Administration
 J. Christensen

Crime Victims Services
 Commission

Office of Legal Affairs

Legislative Analysis
 and Consultation
 Services

Bureau of Health
 Policy, Planning, and
 Access

Bureau of Health
 Professions

Bureau of Health Systems

Chief Administrative
 Officer
 Public Health
 Administration
 J. Chabul

Office of Minority
 Health and Multi-
 Cultural Services

Bureau of Health
 Promotion and
 Disease Control

Division of Chronic
 Disease and Injury Control

Tobacco Section

Division of HIV/AIDS-STD

Bureau of Epidemiology

Division of Communicable
 Disease & Immunization

Epid. Services Division

Environmental & Occup.
 Epid. Division

Division for Vital Records
 and Health Statistics

Bureau of Family, Maternal
 and Child Health

Women, Infants, and
 Children Division (WIC)

Division of Family and
 Community Health

Children's Special Health
 Care Services Plan Division

Chief Medical
 Executive
 M. Boulton

Bureau of Laboratories

Chemistry & Toxicology
 Division

Infectious Disease
 Division

Office of Public Health
 Health Preparedness

Mental Health
 and Substance
 Abuse
 Administration
 P. Barne

Bureau of Substance
 Abuse and Addiction
 Services

Division of Substance Abuse
 Prevention and Control

Division of Community Services
 and Gambling Treatment

Office of Psychiatric/Medical Services

Mental Health and Substance Abuse
 Administration

Bureau of Hospital,
 Center and Forensic
 Mental Health
 Services

Outpatient Clinical Services

Center for Forensic Psychiatry

Huron Valley Center

W. Reuther Psychiatric Hospital

McPiasant Center

Kalamazoo Psych. Hospital

Gato Center

Hawthorn Center

Office of Recipient Rights

Bureau of Community
 Mental Health Services

Division of Program Development,
 Consultation, and Contract

Division of Quality Management and
 Planning

Division of Community Living and Long Term
 Care Planning

Mental Health Services to Children &
 Families

Director
 Drug Control
 Policy
 Y. Blackmond

* Move in functi
 * Move in functi

Covered Component

Non-Covered Component

* Move in function



STATE OF MICHIGAN
DEPARTMENT OF COMMUNITY HEALTH
LANSING

JENNIFER M. GRANHOLM
GOVERNOR

JANET OLSZEWSKI
DIRECTOR

Date: July 20, 2004

To: Local Health Departments
Health Care Providers
Other Interested Parties

From: Janet Olszewski 
Director

Subject: Disclosure of Protected Health Information
for Disease Prevention and Control Under the
Michigan Public Health Code and the Federal
HIPAA Privacy Rule

The Michigan Department of Community Health (MDCH) and local health departments (LHDs) are responsible for safeguarding the public health, including preventing and controlling the spread of disease. MCL 333.2221; 333.2433; 333.5101 *et seq.*; Administrative Rules, R 325.171 *et seq.* In order to prevent and control the spread of communicable diseases, the Public Health Code and administrative rules adopted under the Code, require physicians and clinical laboratories to report patients with designated diseases, infections, or conditions to the patients' local health departments.¹ MCL 333.5111(1); R 325.173. In addition to those designated, physicians are required to report the unusual occurrence of any disease, infection, or condition that threatens the health of the public. R 325.173(2). In addition to mandated reporting by physicians and laboratories, all of the following individuals are specifically authorized to report conditions to MDCH and LHDs: administrators, epidemiologists, infection control practitioners from health care facilities or other institutions, dentists, nurses, pharmacists, physician's assistants, veterinarians, and any other health care professional. R 325.173(9).

The Public Health Code, and administrative rules, also authorize MDCH and LHDs to investigate a suspected outbreak or exposure, authorizing the MDCH or the LHD to inspect or investigate any matter, thing, premises, place, person, record, vehicle, incident, or event. MCL 333.2241(1); 333.2446. Additionally, the MDCH and LHDs are authorized to collect specimens and to obtain information about individuals. R 325.174. With regard to information:

An investigator who presents official identification of the local health department or the department [of community health] shall promptly be provided with medical and epidemiological information pertaining to any of the following:

¹ To obtain information on specific reporting requirements, contact the Michigan Department of Community Health at (517) 335-8165.

- (a) Individuals who have designated conditions or other conditions of public health significance.
- (b) Individuals, whether ill or well, who are part of a group in which an unusual occurrence, outbreak, or epidemic has occurred.
- (c) Individuals who are not known to have a designated condition but whose medical or epidemiological information is needed for investigation into the cause of the occurrence of the condition.
- (d) Individuals who were potentially exposed to a designated condition.
- (e) Individuals who have a declared critical health problem pursuant to the provisions of Act No. 312 of the Public Acts of 1978, being §325.71 *et seq.* of the Michigan Compiled Laws.

R 325.174(2).

Individually-identifiable (including patient name, birthdate, residence) health information is included in the information that a health care provider must report for a designated disease or in response to an investigation.² In December 2000, the U.S. Department of Health and Human Services adopted regulations to protect the privacy of individually-identifiable health information (Privacy Rule). These regulations were adopted under the Health Insurance Portability and Accountability Act (HIPAA) to set national standards for the use and disclosure of health information.

Questions have been raised about the impact of HIPAA on individually-identifiable health information that is to be provided to MDCH or LHDs by entities that are covered by the Privacy Rule ("covered entities") for disease prevention and control purposes. The HIPAA Privacy Rule was not intended to diminish the authority of public health agencies with regard to disease prevention and control.

The Privacy Rule allows a covered entity to disclose, without individual authorization, protected health information to a public health authority; i.e. a release signed by a patient is not necessary to disclose this information. 45 CFR §164.512(b). A public health authority includes an agency of a state, or a subdivision of a state, that is responsible for public health matters as part of its official mandate, or a person or entity acting under a grant of authority, or as an agent, contractor, or an employee of a public health agency. 45 CFR §164.501. Both MDCH and the LHDs, are public health authorities, responsible under the Public Health Code for public health matters, including disease surveillance, prevention, and control. This means that the Privacy Rule does not prevent covered entities (including hospitals, physicians, clinical laboratories, and other health care providers) from providing individually-identifiable health information to

² See R 325.171(i) and R 325.173(13), (16), (17) for information that must be provided to MDCH or the LHD.

Local Health Departments
Health Care Providers
Other Interested Parties
July 20, 2004
Page 3

MDCH and to LHDs for disease prevention and control activities. The information requested from providers represents the minimum necessary to carry out the public health purposes of these activities pursuant to 45 CFR §164.514(d) of the Privacy Rule.

It is vitally important that all health care providers work cooperatively to promptly report designated or unusual occurrences of diseases, infections or conditions, and facilitate access to health information during investigations. It is only with the vigilance and assistance of health care providers that we can succeed in safeguarding the health of our citizens and preventing the spread of disease. For more information about disease surveillance, prevention, and control, contact the Division of Communicable Diseases at (517) 335-8165.

JO/mp



STATE OF MICHIGAN
DEPARTMENT OF COMMUNITY HEALTH
LANSING

JENNIFER M. GRANHOLM
GOVERNOR

JANET OLSZEWSKI
DIRECTOR

Date: September 13, 2004

To: Local Health Departments
Health Care Providers
Other Interested Parties

From: Janet Olszewski *JEO*
Director

Subject: Disclosure of Protected Health Information
for HIV/AIDS Reporting, Partner Notification,
Counseling, and Investigation Under the
Michigan Public Health Code and the Federal
HIPAA Privacy Rule

The Michigan Department of Community Health (MDCH) and local health departments (LHDs) are responsible for safeguarding the public health, including preventing and controlling the spread of disease. MCL 333.2221; 333.2433; 333.5101 *et seq.*; Administrative Rules, R 325.171 *et seq.* These responsibilities include the prevention and control of human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS).

LHDs have requested assistance from MDCH to clarify the application of the HIPAA Privacy Rule to their duties with regard to HIV/AIDS. In this regard, LHDs report difficulty obtaining HIV/AIDS information required by state law from some health care providers who claim that the HIPAA Privacy Rule prohibits such disclosure. As discussed below, the HIPAA Privacy Rule permits the use and disclosure of protected health information to public health authorities authorized by law to collect or receive such information. Indeed, Congress provides in § 1178(2)(B) of the HIPAA statute: "[N]othing in this part shall be construed to invalidate or limit the authority, power, or procedures established under any law providing for the reporting of disease or injury, child abuse, birth or death, public health surveillance, or public health investigation or intervention." See also, 45 CFR § 160.203(c).

State Law Requirements for Reporting, Partner Notification, and Investigation of HIV/AIDS.

Michigan law clearly designates LHDs to receive HIV/AIDS reporting forms, provide partner notification and counseling, and to investigate incidences of serious communicable diseases, which includes HIV/AIDS.

The Public Health Code, and administrative rules adopted under the Code, require physicians to report patients with AIDS to the patient's LHD within 24 hours of its diagnosis or discovery. R 325.172(1), 326.173(1). Additionally, health care providers (except for clinical laboratories), governmental entities, and any other person that obtains from a test subject a test result that indicates that the subject is HIV infected, must file a report with MDCH and the LHD within 7 days. MCL 333.5114(1), (2). The reports must be filed on Forms CDC 50.42A and CDC 50.42B, which are provided by MDCH.¹ MCL 333.5114(1), (2); R 325.173(14). These reports include individually-identifiable information. For HIV infection and AIDS, reports to LHDs must include the test subject's name, address, and telephone number and other information needed by the LHD to carry out partner notification. MCL 333.5114(2); MCL 333.5114a(2); MCL 333.5131(5)(b). In this regard, a person or governmental entity that administers a test for HIV or an antibody to HIV to an individual shall refer the individual to the appropriate LHD for assistance with partner notification if the test results indicate that the individual is HIV infected and the person or entity that administered the test determines that the individual needs assistance with partner notification. MCL 333.5114a(1). The LHD must attempt to interview the individual and inform the individual of his or her legal obligation to inform sexual partners of the individual's HIV infection before engaging in sexual relations. MCL 333.5114a(3). The LHD must also offer to contact the individual's sexual partners or hypodermic needle-sharing partners. The LHD must then contact each partner regarding the individual's possible exposure to HIV and counsel the individual about HIV including available tests and steps to take to avoid transmission of HIV. MCL 333.5114a(4), (5).

As stated above, health care providers, governmental entities, and any other person that obtains a positive test result from a subject must report to the LHD the name, address, and telephone number of a subject that is HIV infected or has AIDS. The Public Health Code only allows an exception where: (1) an individual undergoes a test for HIV or an antibody to HIV in a physician's private practice office or the office of a physician employed by or under contract to a health maintenance organization; (2) the test subject requests that the report made by the physician not include the name, address, and telephone number of the test subject; and (3) the physician determines that the test subject does not need assistance with partner notification. MCL 333.5114(3). If the physician agrees to keep the infected person's HIV positive status confidential, then the physician has an affirmative duty to carry out the mandated role of the local public health department to notify and counsel partners as required by law. MCL 333.5131(5)(b). This duty is imposed in order to protect the public health and safety of others. A physician may discharge this affirmative duty by referring the individual to the appropriate LHD for assistance with partner notification. A physician who releases the results of an HIV

¹ Forms CDC 50.42A and CDC 50.42B are available from LHDs or MDCH Division of HIV/AIDS/STD, by calling (517) 241-5900 or on MDCH's website at www.Michigan.gov/mdch.

test or other related information in compliance with the physician's affirmative duty to notify partners or referral of infected patients to local health departments in the above circumstances, is immune from civil or criminal liability and administrative penalties including, but not limited to, licensure sanctions, for the release of that information. MCL 333.5131(6).

The Public Health Code contains strict provisions to protect the confidentiality of information concerning individuals with AIDS or HIV infection including all reports, records, and data pertaining to testing, care, treatment, reporting, and research, and information pertaining to partner notification. MCL 333.5131. However, these provisions authorize the disclosure of identifying information to MDCH and LHDs, as described above. MCL 333.5131(5), (6). Additionally, a physician can disclose HIV/AIDS related patient information to the MDCH, a local health department, or other health care provider for one or more of the following purposes: i) to protect the health of an individual, ii) to prevent further transmission of HIV, iii) or to diagnose and care for a patient. The information can include identifying information if the physician believes it necessary to prevent a foreseeable risk of transmission. MCL 333.5131(5)(a); MCL 333.5131(7).

The Application of the HIPAA Privacy Rule

In December 2000, the U.S. Department of Health and Human Services adopted regulations to protect the privacy of individually-identifiable health information (Privacy Rule). These regulations were adopted under the Health Insurance Portability and Accountability Act (HIPAA) to set national standards for the use and disclosure of health information.

The HIPAA Privacy Rule allows a covered entity to disclose, without individual authorization, protected health information to a public health authority; i.e. a release signed by a patient is not necessary to disclose this information. 45 CFR §164.512(b). A public health authority includes an agency of a state, or a subdivision of a state, that is responsible for public health matters as part of its official mandate, or a person or entity acting under a grant of authority or as an agent, contractor, or employee of a public health agency. 45 CFR §164.501. Both MDCH and the LHDs are public health authorities, responsible under the Public Health Code for implementing laws to prevent and control the transmission of disease, including AIDS and HIV. This means that the Privacy Rule does not prevent covered entities (including hospitals, physicians, clinical laboratories, and other health care providers), from providing individually-identifiable health information to MDCH and to LHDs for HIV/AIDS prevention and control activities. The information requested from providers represents the minimum necessary to carry out the public health purposes of these activities pursuant to 45 CFR §164.514(d) of the Privacy Rule.

Local Health Departments
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It is vitally important that all health care providers work cooperatively to promptly report HIV/AIDS and provide information needed by MDCH and LHDs to carry out their responsibilities under the Public Health Code. It is only with the vigilance and assistance of health care providers that we can succeed in safeguarding the health of our citizens and prevent the spread of HIV/AIDS and other diseases. For more information about HIV/AIDS prevention and control, contact the Bureau of Health Promotion and Disease Control, HIV/AIDS-STD Division, at (517) 241-5900.

JO/mp



STATE OF MICHIGAN
DEPARTMENT OF COMMUNITY HEALTH
LANSING

JENNIFER M. GRANHOLM
GOVERNOR

JANET OLSZEWSKI
DIRECTOR

Date: January 22, 2004

To: Health Care Providers
And Other Interested Parties

From: Janet Olszewski *JO*
Director

Subject: Disclosure of Protected Health Information for
Fetal Alcohol Syndrome Surveillance

The Michigan Department of Community Health is conducting public health surveillance to determine the incidence of Fetal Alcohol Syndrome (FAS) in the Detroit, Wayne County area, in its capacity as a public health authority. This surveillance is supported by funds from the Centers for Disease Control and Prevention (CDC), and is conducted in accordance with guidelines established by the CDC.

This surveillance will be conducted by local FAS project staff who will gather information from birth and death records and from the medical records of health care providers. The records requested pertain to an infant who has had in utero exposure to alcohol, or demonstrates criteria suggestive of FAS. Standard medical record abstraction forms, modified for Michigan's use from forms developed by the CDC are used to collect a small subset of information from these records. Project staff will use this information to identify all infants fitting a standardized case definition for FAS. All information is kept confidential.

In December 2000, the U.S. Department of Health and Human Services adopted regulations to protect the privacy of individually-identifiable health information (Privacy Rule). These regulations were adopted under the Health Insurance Portability and Accountability Act (HIPAA) to set national standards for the use and disclosure of health information. In conducting surveillance, the Department serves as a "public health authority" as defined in the Privacy Rule.

Under the Privacy Rule, a public health authority includes an agency of a state, or a subdivision of a state, that is responsible for public health matters as part of its official mandate, or a person or entity acting under a grant of authority or as an agent, contractor, or employee of a public health agency [45 CFR §164.501]. In this regard, the Department is a public health authority that is authorized by the Public Health Code to collect and receive protected health information for the purpose of protecting the public health and controlling disease, injury or disability [MCL 333.2221]. This means that the Privacy Rule allows "covered entities" (such as hospitals,

Health Care Providers
And Other Interested Parties
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Page 2

physicians, and other health care providers) to disclose, without individual authorization, protected health information to the Department for purposes of FAS surveillance. The information requested from providers represents the minimum necessary to carry out the public health purposes of this surveillance pursuant to 45 CFR §164.514(d) of the Privacy Rule.

I urge health care providers, as key partners in this process, to facilitate access to information for these reviews. I appreciate their cooperation in this public health endeavor to further promote and protect the health and well-being of women, infants and families in Michigan. For more information about the Fetal Alcohol Syndrome Program, contact Cheryl Lauber, MSN, DPA at 517-335-9483.

JO/dc



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF COMMUNITY HEALTH
LANSING

JANET OLSZEWSKI
DIRECTOR

DATE: November 4, 2003

TO: Health Care Providers and Other Interested Parties

FROM: Janet Olszewski 
Director

SUBJECT: *Disclosure of Protected Health Information
for the Diabetes Care Improvement Project*

The Michigan Department of Community Health (MDCH) is mandated by the Public Health Code to establish a chronic disease prevention and control program for several chronic diseases, including diabetes. [MCL 333.5411]. In carrying out this mandate, MDCH has established the Michigan Diabetes Prevention and Control Program. As one of its initiatives, the Prevention and Control Program operates the Michigan Diabetes Outreach Network (MDON) to ensure comprehensive diabetes management for persons with diabetes residing in Michigan. The MDON is supported by funds from the Centers for Disease Control (CDC) and Prevention for Systems-Based Diabetes Prevention and Control Programs, pursuant to the Public Health Service Act, 42 USC §§ 241(a) and 247b(k)(2) and 67 Fed Reg 70602 (November 25, 2002). The MDON is operated in accordance with guidelines established by CDC.

The MDON's mission is to reduce the burden of diabetes on the individual, the family, the community, and the health care system. This is accomplished through six regional diabetes outreach networks that develop collaborative partnerships with health care delivery agencies, sponsor and provide professional education, and coordinate and develop diabetes resources within their respective service regions. The regional networks work with over 150 agencies in the state to implement a Diabetes Care Improvement Project (DCIP). The participating agencies include physician offices, community health centers, home care agencies, and state certified diabetes self-management education programs, and a range of other health care providers.

Individuals voluntarily take part in the DCIP, and in other diabetes related activities sponsored by the MDON and the networked agencies. In implementing the DCIP, participating agencies collect data during visits of patients and provide this data to outreach networks in order to improve care. In turn, the networks collaborate with the participating agencies to ensure that people with diabetes receive care according to current American Diabetes Association clinical practice standards. Additionally, patient data from participating agencies is provided to MDCH,